



**THE ATTORNEY GENERAL  
OF TEXAS**

**JOHN ~~GERALD C. MANN~~**  
**ATTORNEY GENERAL**

**AUSTIN 11. TEXAS**

Hon. Paul T. Holt  
County Attorney  
Travis County  
Austin, Texas

Dear Sir:

Opinion No. 0-1474

Re: Whether certain real  
property owned and used  
exclusively by Seton  
Infirmary of Austin,  
Texas, is exempt from  
Taxation under the laws  
of this State.

We are in receipt of your letter in which you request an opinion of this Department as to whether certain property owned by Seton Infirmary is exempt from taxation under the laws of this State. The facts appear to be that a house is located on the grounds of Seton Infirmary which was formerly used as a nurses' home. During the last several years this property was used as a home for the caretaker of the premises of Seton Infirmary. It seems that Seton Infirmary receives no rent from the caretaker but just furnishes the house to him as a home free.

An examination of the facts reveals that the operations of Seton Infirmary bring it within the classification of a tax exempt hospital as set out by the Commission of Appeals of Texas, Section A, in the case of Santa Rosa Infirmary vs. City of San Antonio, 259 S. W. 926. We do not set out the facts relating to the operation of Seton Infirmary since they are practically identical with those of Santa Rosa Infirmary as set forth in that case. That is the leading case explaining which hospitals are exempt from taxation in this State. This exemption is based upon Article 8, Section 2 of our Constitution which reads in part as follows:

"The Legislature may, by general laws, exempt from taxation public property used for public purposes;..."

The exemption is also based upon Article 7150, Section 7 of the Revised Civil Statutes of Texas, which reads

as follows:

"All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

In discussing the above exemption the court in the San Antonio case stated as follows:

"There is no claim here that any part of the hospital building was leased out in the ordinary sense, but it is insisted that, because the major part of the rooms in the hospital were used to take care of pay patients, and because surgeons, not themselves engaged wholly in a charitable work, were permitted to use the operating rooms for certain fixed charges imposed upon their patrons able to pay, and because a certain ward was devoted to the charitable work of St. Luke's Clinic, and because the dispensary or small drug store in the building sold drugs to its pay patients for a profit, the use of the property by the Sisters of Charity became thereby nonexclusive by them, and also deprived the organization of its characteristic as a purely public charity. The Constitution does not in terms require a charitable institution, if it may claim exemption from taxation, to use its buildings exclusively for charitable purposes, as it does require in the case of educational institutions that they be used exclusively for educational purposes, but the requirement is only that the buildings be used by the charitable institution, as heretofore pointed out."

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This case sets up two requirements for the exemption from taxation of property of such a charitable institution. One, the property must be owned by the organization claiming the exemption; two, the property must be exclusively used by said organization. The facts in your case show that Seton Infirmary owns the property and the only question is whether or not the property which is furnished to the caretaker of the premises as a home, is being exclusively used by the organization. It is the opinion of this Department that it is so being used.

We think it no more than reasonable that a hospital of the size of Seton Infirmary should have a caretaker and overseer who resides on the premises to see that the same are not disturbed and are kept in good condition. Seton Infirmary charges the caretaker with no rent for the use of the property. Of necessity, the use of the home was considered as part of the caretakers compensation. Whatever savings come from having this property for the use of the caretaker results to Seton Infirmary itself.

It is the opinion of this Department, therefore, that this property of Seton Infirmary which is used as a home for the caretaker on the premises is tax exempt.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By: /s/ Billy Goldberg  
Billy Goldberg  
Assistant

BG:pbp-dhs

APPROVED NOVEMBER 20, 1939

/s/ Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

APPROVED

OPINION

COMMITTEE

By /s/ BWB

CHAIRMAN